

Internal Revenue Service
District Director

Department of the Treasury
P.O. Box 2508
Cincinnati, OH 45201

Person to Contact:

Telephone Number

Refer Reply to:

Date: JAN 11 1990

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under the provisions of section 501(c)(13) of the Internal Revenue Code of 1986 and its applicable Income Tax Regulations.

Section 501(c)(13) provides exemption from Federal income tax for cemetery companies owned and operated exclusively for the benefit of their members or which are not operated for profit; and any corporation chartered solely for the purpose of the disposal of bodies by burial or cremation which is not permitted by its charter to engage in any business not necessarily incident to that purpose, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Based on the information provided by your organization, we have concluded that your organization does not qualify for exemption under section 501(c)(13) of the Internal Revenue Code for the reasons shown on Enclosure I.

Consideration was given to whether you qualify for exemption under other subsections of section 501(c) of the Code and we have concluded that you do not.

As your organization has not established exemption from Federal income tax, it will be necessary for you to file an annual income tax return on Form 1041 if you are a trust or Form 1120 if you are a corporation or an unincorporated association.

If you are in agreement with our proposed denial, please sign and return one copy of the enclosed Form 6018, Consent to Proposed Adverse Action.

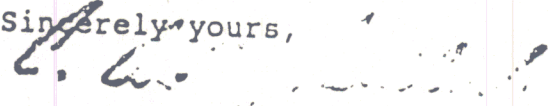
You have the right to protest this proposed determination if you believe that it is incorrect. To protest, you should submit a written appeal giving the facts, law and other information to support your position as explained in the enclosed Publication 892, "Exempt Organizations Appeal Procedures for Unagreed Issues". The appeal must be submitted within 30 days from the date of this letter and must be signed by one of your principal officers. You may request a hearing with a member of the office of the Regional Director of Appeals when you file your appeal. If a hearing is requested, you will be contacted to arrange a date for it. The hearing may be held at the Regional Office, or, if you request, at any mutually convenient District Office. If you are to be represented by someone who is not one of your principal officers, he or she must

0034 0020

file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements as set forth in Section 601.502 of the Statement of Procedural Rules. See Treasury Department Circular No. 230.

If we do not hear from you within the time specified, this will become our final determination.

Sincerely yours,


C. Ashley Buellard
District Director

Enclosures: 3

Enclosure I

[REDACTED]
[REDACTED]

[REDACTED] was incorporated in [REDACTED] on [REDACTED]. Its stated purpose is to operate a cemetery in [REDACTED], [REDACTED]. Anyone can be buried in the cemetery.

The property was acquired in [REDACTED]. It includes both in-ground and mausoleum facilities for burial. The only source of revenue for the organization is monies from the sale of burial plots and mausoleums.

The organization has no members and any action taken by the organization is done so by the trustees. The trustees each receive annual compensation of \$[REDACTED].00

As required by [REDACTED] law, the organization maintains a perpetual care fund for the cemetery and allocates [REDACTED] percent of the sale price of burial sites to this fund.

[REDACTED] has entered into a management agreement with [REDACTED], a [REDACTED] Corporation. Under the terms of this agreement, [REDACTED] sets a minimum sale price for burial plots and mausoleums; exercises oversight and control of the property and policies connected therewith; and, monitors the performance of the management organization.

[REDACTED] the management agent, is responsible for all sales, including maintaining an office and sales staff; advertising and marketing the property; and, maintenance of the property. Under the terms of the contract, [REDACTED] has the right to set a price higher than the minimum sale price by [REDACTED]. Therefore, [REDACTED] controls prices for the cemetery. [REDACTED] receives [REDACTED] percent of fees charged. There is no maximum price set for burial plots or mausoleums.

In addition, [REDACTED] is responsible for opening and closing all graves and it sets its own fees for these services and collects and retains [REDACTED] of these fees. [REDACTED] does not sell markers or monuments. These items may be purchased from [REDACTED] or from a third party.

Section 501(c)(13) of the Internal Revenue Code provides for the exemption from Federal income tax of cemetery companies owned and operated exclusively for the benefit of their members or which are not operated for profit; and any corporation chartered solely for the purpose of the disposal of bodies by burial or cremation which is not permitted by its charter to engage in any business not necessarily incident to that purpose, no part of the net earnings which inures to the benefit of any private shareholder or individual.

Income Tax Regulations 1.501(c)(13)-1(b) hold that any nonprofit corporation, chartered solely for the purpose of the burial or the

cremation of bodies, and not permitted by its charter to engage in any business not necessarily incident to that purpose, is exempt from income tax, provided that no part of its earnings inures to the benefit of any private shareholder or individual.

Revenue Ruling 77-70 held that a cemetery organization which agreed to pay the former owner payments based on a percentage of sales of each lot sold did not qualify for exemption because its net earnings inure to the benefit of the former owner. You have a management agreement with Eastern Cemetery Associates, Inc. which pays 80% of gross receipts to Eastern. Thus, the net earnings inure to the management company.

Rose Hills Memorial Park Association v. United States, 463 F.2d 425(Ct.Cl.1972) held that an open-ended land sale agreement enabled the seller to share in the appreciation of the land and to receive, in effect, an equity interest in the cemetery company. The court held that such an equity interest was inconsistent with Internal Revenue Code section 501(c)(13) exemption because the interest inured to the benefit of individuals.

Since [REDACTED] has the power to control the sales price of burial property, it has equity interest in the cemetery.

Revenue Ruling 64-217 held that a perpetual care fund, the income of which is turned over to a profit-making cemetery for use in connection with the maintenance of the cemetery properties and burial lots, is not entitled to exemption.

Based on the above facts and applicable law and precedent, [REDACTED] fails to qualify for exemption under section 501(c)(13) because its earnings inure to the benefit of a private company, [REDACTED].

Internal Revenue Service

Northeast Region

Date: APR 3 1937

Department of the Treasury

Address any reply to:

Ohio Appeals Office

P.O. Box 2026

Cincinnati, Ohio 45201

Employer Identification Number:
[REDACTED]

Form Number:
[REDACTED]

Key District:
[REDACTED]

Person to Contact:
[REDACTED]

Contact Telephone Number:
[REDACTED]

Fax Number:
[REDACTED]

Gentlemen:

We have considered your appeal of the adverse action as to your exempt status under section 501(c)(13) of the Internal Revenue Code by the key district director.

Your application for exemption from Federal income tax under Section 501(c)(13) of the Internal Revenue Code is hereby denied. This is a final adverse determination letter. You are required to file Federal income tax returns on form 1120 for any years which are still open under the statute of limitations.

Based on the financial information you furnished, it appears that returns should be filed for the years [REDACTED] and [REDACTED]. You should file these returns with the key district director, EP/EO division with 30 days from the date of this letter, unless a request for an extension of time is granted. Processing of income tax returns will not be delayed because you have filed a petition to the Tax Court. You should file returns for later tax years with the appropriate service center shown in the instructions for those returns.

We will notify the appropriate State officials of this action, as required by Code section 6401(c).

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,

(S)

John J. Woeste
Associate Chief, Appeals

copy to:
[REDACTED]